BEFORE THE
UNITED STATES DEPARTMENT OF COMMERCE

Inquiry into the Status of the Russian Federation as a Non-Market Economy Country Under the Antidumping and Countervailing Duty Laws	Inv. No. A-821-816 Investigation Total Pages: 24 Contains No Business Proprietary Information **<u>PUBLIC DOCUMENT</u>**

REBUTTAL COMMENTS OF NUCOR CORPORATION AND THE COMMITTEE FOR FAIR BEAM IMPORTS

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I. Summary of Rebuttal Comments

Respondents' comments in support of revocation of Non-Market Economy ("NME") status failed to demonstrate that the Russian economy operates on market principles. *See* 19 U.S.C. § 1677(18)(A). Russia indeed has made some progress in its transition from a Soviet-style planned economy to a free market. However, the operative question is not whether Russia has made some progress, but whether its progress has been sufficient to be deemed a market economy. The answer is "no."

The Department has previously noted that Russian costs and pricing structures do not reflect the fair value of merchandise characteristic of a fully functioning market economy. This condition has not fundamentally changed. Additionally, Russia is slipping backwards or stagnating in certain areas, rather than making critical advancements toward further market liberalization. Therefore, we respectfully submit, similar to the approach applied for the People's Republic of China, that any change in Russia's NME status should be part of the World Trade Organization ("WTO") accession negotiations. Accordingly, at this time, the Department should reject the Russian Federation's request for revocation of its NME status.

II. The Department's Practice and the Relevant Law Demonstrate that Revocation is Inappropriate At This Time

A. Applicable Statute

A designation of NME status remains in effect unless and until the Department affirmatively revokes the designation. *See* Section 771(18)(C)(i) of the Tariff Act of 1930. In deciding whether to revoke the NME status of a country, the Department must take into account: (1) the extent to which the currency of the foreign country is convertible into the currency of other countries; (2) the extent to which wage rates in the foreign country are determined by free bargaining between labor and management; (3) the extent to which joint ventures or other investments by firms of other foreign countries are permitted in the foreign country; (4) the extent of government ownership or control of the means of production; (5) the extent of government control over the allocation of resources and over the price and output decisions of enterprises; and (6) such other factors as the administrating authority considers appropriate.

B. Negative Department Precedent

Whenever the issue of economic status has arisen thus far, the Department consistently has decided that Russia merits NME treatment. Previously, the Department determined:

> Russia is in the process of implementing extensive reforms to achieve its goal of becoming a market economy . . . The Russian economy, having emerged from a centrally-planned system, is in a state of transition. Many of the state controls have been abandoned but that does not mean that functioning markets have replaced controls. Because the evidence does not demonstrate that prices and costs in Russia adequately reflect market considerations, we cannot at this time alter Russia's designation as a nonmarket economy.[1]

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[1] Notice of Final Determination of Sales at Less Than Fair Value: Pure Magnesium and Alloy Magnesium from the Russian Federation, 60 Fed. Reg. 16,440, 16,443 (March 30, 1995).

This statement remains true today. The Russian Federation had indeed made some progress in its move toward a market economy. However, in many important areas Russia has actually slid backwards due to a severe financial crisis that began in 1998. In fact, the country's resulting troubles have severely hampered its market liberalization efforts and undone a significant amount of progress.

III. The Ruble is Not Freely or Fully Convertible into the Currency of Other Countries

While Respondents allege that the ruble is convertible, they admit in the same submission that:

> {f}or the purpose of "external convertibility," capital account transactions remain subject to certain restrictions due to concerns on the part of the Russian Government regarding capital flight, which could greatly undermine Russia's economic reform efforts.[2]

Respondents cannot have it both ways. Either the ruble is freely and fully convertible, or it is not. Ample evidence on the record demonstrates that it is not. The Russian producers further admit that the Russian Government: (1) limits the access of its residents to foreign currency if the currency is to be invested overseas; (2) restricts direct investments by Russian residents abroad; and (3) imposes limits on Russian residents purchasing real estate abroad.[3] Such controls are not indicative of a freely or fully convertible currency. Strict government control of capital justifies NME status.

The U.S. Commercial Service has recognized that for "some time the {Government of Russia} has used currency controls as a mechanism to control capital flight. Russian firms operating overseas are required to convert 75 percent of the foreign currency they generate to Russian rubles with the Central Bank, even if held for a short time."[4] Government restrictions in these matters are "too cumbersome and costly" for legitimate businesses.[5]

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2 Comments of JSC Severstal, Novolipetsk Iron & Steel Corporation, and JSC Magnitogorsk Iron and Steel Works, December 10, 2001 ("Russian Producers Comments") at 8-9.

3 *Id*. at 9 (citing Russian Government Submission at § 1.4).

4 U.S. and Foreign Commercial Service, Country Commercial Guide Russia, Fiscal Year 2002, July 15, 2001 ("Country Commercial Guide") at 9 available online at www.usatrade.gov/Website/ccg.nsf/CCGurl/CCG-Russia2002-CH--003622B5.

5 *Id*.

The Government of Russia requires licenses for foreign exchange transactions lasting over 90 days, and currency controls exist on all transactions that require Customs clearance -- for both import and export transactions.[6] Furthermore, the Russian Central Bank maintains account restrictions on non-residents (who have separate types of ruble accounts, including "non-convertible" accounts) and residents (with limitations on the right to engage in foreign exchange).[7]

Russian government controls on currency exchange stand in distinct contrast to the levels of controls that existed in the Czech Republic, Slovakia, Latvia, and Hungary when the Department revoked their NME status.[8] For example, the Department specifically noted that in Latvia:

> Resident and non-resident persons and enterprises can hold foreign currencies in domestic or foreign bank accounts, and there are **no** restrictions on the transfer or use of foreign exchange (FOREX) for domestic business transaction and international trade purposes. There are **no** FOREX surrender requirements and **no** restrictions on the repatriations of profits, after payment of taxes.[9]

This free convertibility is starkly different from the currency restrictions in Russia.

As noted in our initial comments, one of the world's largest accounting firms recently determined that: "Exchange restrictions and controls exist relating to converting Russian Roubles into other currencies. At present, the Russian Rouble is not a convertible currency

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6 *Id*. at 60.

7 *Id*.

8 *See, e.g*., Czech NME Memo at 5; Slovakia NME Memo at 4-5; Latvia NME Memo at 6-7; and Hungary NME Memo at 6-7.

9 Memorandum from Christopher Smith to Troy Cribb re: Antidumping Investigation of Certain Steel Concrete Reinforcing Bars from Latvia – Request for Market Economy Status (January 10, 2001) at 6 (emphasis added)("Latvian Memo").

outside of the Russian Federation."[10] As Russia continues to impose restrictions that significantly limit the convertibility of the ruble, this factor mitigates against revocation of NME status at this time.

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[10] PricewaterhouseCoopers, "Doing Business in the Russian Federation" (2001) ("PricewaterhouseCoopers Report") at 51 (excerpts attached as Exhibit 2 to initial comments).

IV. Wage Rates in the Russian Federation are Not Determined by Free Bargaining Between Labor and Management

The Russian labor market is plagued with inequities that have prevented unions from freely bargaining for a fair wage rate. The economic dislocation that has occurred as a result of the collapse of Russia's communist system, and chronic difficulties in implementing a free market system, have devastated Russian workers. As the U.S. State Department has noted, one-third of the Russian population lives on just over $1 per day.[11] The Fiscal Year 2002 Commercial Guide notes that the Russian labor market remains fragmented, characterized by limited labor mobility across regions, and consequent wage and employment differentials.[12] Wage arrears, a chronic problem in Russia, amounted to U.S. $1.14 billion in June 2001.[13]

Russia's chronic labor instability might occasion the rise of fully effective unions under different circumstances. However, Russia's unions have not yet been able to act as independent representatives of the nation's labor force. This is due, in large part, to the fact that the Russian government has propped up one union and uses it to discourage the growth of strong unions. The Federation of Independent Trade Unions of Russia (FNPR), which inherited the mantle and property of its Soviet predecessor, continues to enjoy a privileged place in Russian society. The U.S. government recently found that FNPR has successfully maintained its dominant stature vis-

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11 U.S. Department of State, Bureau of European and Eurasian Affairs, November 2001 at 6 available online at www.state.gov/r/pa/bgn/index.cfm?docid=3183&CFNoCache=TRUE&printfriendly=true ("Bureau of European and Eurasian Affairs Report") at 2.

12 Country Commercial Guide at 71.

13 *Id*.

à-vis other unions because of its "*us{e} {of} tactics which amount to 'union busting' {and} even intimidation to suppress new unions*."[14]

As has been amply discussed by other parties submitting comments in opposition to the revocation of Russia's NME status, wage rates in other nations whose NME status the Department revoked were determined by "tripartite collective bargaining" arrangements among government, trade unions and enterprise associations.[15] Such a tripartite arrangement does not exist in Russia. Furthermore, it cannot exist unless and until Russian trade unions gain true bargaining power to improve the overall labor situation.

The Russian government adheres to International Labor Organization ("ILO") standards on paper. But, in reality, enforcement of worker rights and worker safety protections are lacking.[16] Parties opposed to revocation of Russia's NME status have placed on the record of this proceeding an extensive amount of information regarding the abysmal state of wage rate and collective bargaining in Russia. This record makes clear that Russia does not meet the ILO mandate of "solid mechanisms for collective bargaining and efficient regulations applicable to social and labour relations."[17] In light of this record and recent findings by the U.S. Commercial Service, it is difficult to see how the Department now could possibly conclude that labor conditions in Russia result from free bargaining between unions and management. Such a result would accord neither with the facts, Commerce precedent, findings by the State Department, nor reason.

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14 *Id*. (emphasis added).

15 *See, e.g.*, Comments by the Ad Hoc Committee of Domestic Nitrogen Producers at Section II.C, Note 17 (December 10, 2001) (citing Slovakia NME Memo at 5-7, Czech NME Memo at 5-6, Hungary NME Memo at 7-8, and Latvia NME Memo at 7-8).

16 Country Commercial Guide at 72.

17 ILO Programme of Cooperation at Section I.

In sum, workers' wages in Russia are not determined by free bargaining between labor and management. To quote the general secretary of the International Confederation of Free Trade Unions: "Russia is in the process of negotiating its accession to the WTO. It should only go in when there is protection for Russia's industries and workers."[18] In a similar vein, the revocation of Russia's NME status should be incorporated into its WTO accession negotiations.

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[18] Address by Bill Jordan, ICFTU General Secretary to the FNPR 4th Congress Moscow, 28 – 30 November 2001, (available at http://www.icftu.org/displaydocument.asp?Language= EN&Index=991214374).

V. Joint Ventures and Other Investments By Non-Russian Firms Are Subject to Significant Restrictions

The central question here is whether Russia is open to foreign investment. The answer again is "no." Even the Russian Producers acknowledge in their comments that barriers to foreign investment in Russia are both *de facto* and *de jure*.[19] The U.S. Commercial Service and Department of State recently found:

> High tax levels and extremely high costs in complying with Russian tax authorities, inconsistent government regulation, the inability of some investors to obtain redress through the legal system, and crime and corruption all dissuade investors. These systemic problems are abetted by chronically weak purchasing power, lack of financing sources, as well as concerns about long-term economic and political stability, which discourage investment.[20]

Moreover, while Russian law ostensibly provides national treatment to foreign investment, "in practice, these protections have yet to be provided, for implementing regulations are still lacking."[21] Furthermore, tax and customs officials refuse to implement provisions regarding national treatment and other existing laws protecting foreign investment, "so these protections remain a dead letter."[22]

The Russian government has restricted foreign direct investment in the aerospace, natural gas, insurance, banking, and defense industries, as well as in the sectors of agriculture, housing, construction and electric power.[23] Furthermore, government licensing directives and restrictions

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19 *See* Russian Producers Comments at 14.

20 Commercial Country Guide at 56.

21 *Id*.

22 *Id*.

23 *Id* at 56-57.

impose additional obstacles in certain sectors, such as banking, mining and telecommunications. They "often can be lengthy and non-transparent."[24] Foreign investors still encounter significant restrictions on ownership of real estate, as well.[25]

The list of barriers to investment in Russia goes on and on as demonstrated by the other comments submitted in this proceeding. "Rule of law, weak corporate governance and respect for property rights, although improved over the years, remain a key concern for foreign investors."[26] Furthermore, extensive political interference; hidden financial liabilities due to the practicalities involved with getting money in and out of the country; inadequate bankruptcy procedures; and weak minority shareholder rights all acts as barriers to foreign investment and joint ventures.[27]

Not surprisingly, the actual amount of foreign direct investment ("FDI") in Russia is small.[28] The United States, the leading foreign investor in Russia, decreased its direct foreign investment almost by half (from $2.1 to $1.2 billion) from 1999 to 2000.[29] As the State Department has found: a "significant drawback for investment is the banking sector, which has neither the resources, capability, nor the trust of the population to attract substantial savings and

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24 *Id*. at 57.

25 *Id*.

26 *Id*. at 58

27 *Id*..

28 Bureau of European and Eurasian Affairs Report at 7.

29 Country Commercial Guide at 72. These are the most recently reported figures contained in the fiscal 2002 U.S. Country Commercial Guide for Russia.

intermediate them to productive investments."[30] Ruble lending rates have not improved since the financial crisis.[31]

The Department should contrast Russian restrictions on foreign investment to those of other countries at the time of their NME status revocations. These nations permitted foreign investment in a far greater range of sectors, if not all sectors, with more liberal laws concerning repatriation of hard-currency. At the time of the Latvian NME revocation, the Department noted that the country's:

> liberal FDI policies, combined with a relatively stable macroeconomic and generally favorable business environment have resulted in cumulative FDI per capita that is among the highest in the region . . . . All sectors of Latvia's economy are open to foreign investment, and within the framework of the foreign investment law, foreign invested and domestic firms receive equal treatment under domestic law with respect to their business operations. One hundred percent foreign ownership of a company is permitted.[32]

This is the antithesis of the current situation in Russia. Both because of a lingering Communist mind-set and extensive corruption, in no way can one describe Russia as a "generally favorable business environment."[33]

Foreign direct investment per capita in Russia in 2000 was approximately U.S. $14.[34] In comparison, per capita FDI in Slovakia and the Czech Republic were $278 and $437,

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30 Bureau of European and Eurasian Affairs Report at 7.

31 *Id.* Please see *infra* for additional problems related specifically to the lack of Russian reform in the country's banking infrastructure.

32 Latvia Memo at 9.

33 Nucor Corporation and the Committee for Fair Beam Imports extensively discussed the pervasiveness of Russian corruption, and its impact on Russia's transitioning economy, throughout comments filed with the Department on December 10, 2001. We respectfully refer the Department to those comments, which we hereby incorporate by reference.

34 *See Inside US Trade*, Vol. 20, No. 1, January 4, 2002, at 26.

respectively, during the years when the Department revoked their NME status.[35] The differential between these figures illustrates the wide disparity in foreign investment environments between those nations that have successfully transitioned to market-based economies as compared to Russia.

Nor does Russia appear ready and able to resolve its chronic problems regarding the lack of foreign direct investment. Just a few months ago the U.S. Commercial Service noted, in a considerable understatement, that with regard to investment priorities, there "still appears to be some ambivalence on the part of government officials, particularly in the regions, to the value of some forms of foreign direct investment in the private sector."[36] This parochial resentment of foreign direct investment permeates many Russian regions and further reinforces the NME character of the economy.

A recent U.S. government report deems joint ventures, as a particular form of foreign investment in Russia, less than "preferable."[37] Indeed, "recent experience shows that foreign minority shareholders {in JV's} face serious difficulty in protecting their interests in Russian courts."[38] The U.S. Commercial Service, author of this report, warns that "a U.S. investor invites trouble when it cedes oversight of any aspect of a JV to a Russian partner who does not share the same objectives."[39] The report states that it is a "recipe for disaster" for a U.S. company to attempt to be an "absentee" partner and to expect that the Russian partner will manage daily

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35 *Id*.

36 Country Commercial Guide at 10.

37 *Id*. at 29.

38 *Id*.

39 *Id*.

operations, implement a business plan, or wire profits on schedule.[40] The report concludes: "Any firm that forms a JV in Russia should be ready to invest the constant personal attention of American managerial staff to keep the business on-course."[41]

As demonstrated above, Russia has failed to take the steps necessary in order to open the country to any meaningful foreign direct investment.

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40 *Id*.

41 *Id*.

VI. The Russian Government Exercises Substantial Control Over the Means of Production, Allocation of Resources and Over the Price and Output Decisions of Enterprises

Those asking for revocation of Russia's status as a non-market economy concede that the Russian Government continues to regulate the prices and/or movement of natural gas, electricity, heat energy, oil, railways, port services, defense industry services, and "various social goods."[42] As the European Bank for Reconstruction and Development ("EBRD") recently noted, the Russian government is "keeping tight control" of the natural oil and gas industries, raising export tariffs and overseeing margins.[43] As the Russian comments concede, at least 15 percent of the nation's GDP is subject to price regulation;[44] this percentage is so high that the number speaks for itself. It is exactly this degree and type of government control over prices, the allocation of resources, and other intrusions into the market that justify maintaining Russia's NME status.

The extent to which the Russian government controls the means of production is well illustrated in this excerpt on agriculture from the most recent (fiscal year 2002) U.S. Country Commercial Guide for Russia:

> Experience has shown that one of the most important factors determining success or failure of a foreign investment project in agriculture is the degree to which the local administration supports the project, is willing to clear obstacles when necessary and otherwise not interfere in project activities. Almost all administrations invite investment into their regions, but <u>fewer are prepared to allow businesses to operate in a relatively open market without state interference with respect to issues such as pricing</u>

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42 Russian Producers Comments at 22.

43 European Bank for Reconstruction and Development, Russian Federation Investment Profile 2001, ("EBRD Report") at 18.

44 Russian Producers Comments at 22.

> inputs and output, and with whom businesses contract for services.[45]

This continuation of Soviet economics is a vivid example of why revocation of Russia's NME status is inappropriate at this time.

It is worth emphasizing that in 2001, there existed in Russia 367,400 business entities owned by the government, while another 144,500 organizations claimed mixed government/private ownership.[46] Moreover, the government controlled electricity, natural gas and railroad sectors account for 13 percent of Russia's GDP.[47] The U.S. government's fiscal year 2002 U.S. Country Commercial Guide notes that Russian control over these enterprises has "traditionally delivered energy and transportation to Russian businesses and consumers at uneconomically low prices, *which has distorted the economic landscape*."[48] Essentially, Russian control over these sectors of the economy constitutes state subsidization in an extreme form. It also does not represent behavior indicative of a functioning free market system.

The agricultural sector serves as a vivid example of Russian government control of the means of production. First and as noted above, foreign investors may not own most agricultural operations.[49] Indeed, government regional administrations will implement embargoes on the movement of agricultural products out of the region after harvest to ensure repayment of debts or

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45 Country Commercial Guide at 59 (emphasis added).

46 Russian Federation Investment Profile 2001, EBRD at 13; *see also* Russian Producers Comments at 18. In support of their request that the Department revoke Russia's NME status, the Russian producers cite a report holding that more than 25 percent of large-scale enterprise assets are in private hands or in the process of being privatized. Of course, this figure indicates that the vast majority of big businesses, approximately 75 percent, have not even started the process of being privatized.

47 Country Commercial Guide at 8.

48 *Id*. (emphasis added).

49 *Id*. at 59.

to guarantee local supply.[50] While Communist collective farms and state enterprises have "undergone largely cosmetic reform . . . . {they} still operate much the same as they did during Soviet times."[51] These collective farms still fulfill certain social welfare responsibilities, such as providing schools, medical facilities and full employment for local villages.[52]

Regarding expropriation by the Russian government of foreign property and investment, the U.S. Commercial Service has noted that although it is "unlikely" that the current leadership would nationalize foreign investment or engage in expropriation, in several cases "local government interference, or lack of enforcement of court rulings protecting investors has been a problem."[53] Indeed, the U.S. embassy is tracking a number of cases in which foreign companies are seeking compensation for the loss of their investment or property due to government action or inaction.[54] To date, no compensation has yet been paid.[55] Such valid concerns about government interference and/or the threat of expropriation further undermine claims of a free market system.

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50 *Id*.

51 *Id*.

52 *Id*.

53 *Id*. at 62.

54 *Id*.

55 *Id*.

VII. **Other Relevant Factors that the Department Has Previously Considered Demonstrate that Revocation is Not Appropriate at this Time**

A. **Membership in the World Trade Organization and the OECD**

Membership in international organizations, which require a commitment to free trade and open markets, is a relevant consideration in this matter. Importantly, Russia is not yet a member of the WTO. In the Department's determination to revoke the NME status of the Czech Republic, for example, the Department emphasized that the Czech Republic, unlike Russia, was a founding member of the WTO and had assumed all the obligations and commitments that such membership requires.[56] The Department also noted that, as a participant in the Uruguay Round of multilateral trade negotiations, the Czech Republic significantly reduced tariff rates, and consolidated and gave permanence to a broad range of trade reforms.[57] The same cannot be said for Russia today.

Nor is Russia a member of the Organization for Economic Cooperation and Development ("OECD").[58] In the Czech determination, the Department noted that OECD membership demonstrates a commitment to an open market economy, democratic pluralism and respect for human rights.[59] The Department stated that OECD membership displays a willingness to take

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56 Memorandum from John Brinkman to Robert LaRussa re: Antidumping Investigation of Certain Small Diameter Carbon and Alloy Seamless Standard Line and Pressure Pipe from the Czech Republic: Non-Market Economy ("NME") Status, November 29, 1999, ("Czech Republic Memo") at 15.

57 *Id*.

58 *See*, for a list of members of OECD, http://www.oecd.org/oecd/pages/home/displaygeneral/0,3380,EN-countrylist-0-nodirectorate-no-no-159-0,FF.html.

59 Czech Republic Memo at 15.

action to ensure sustained economic growth and external and internal stability, to reduce obstacles to trade in goods and services, and to liberalize capital flows.[60]

Accordingly, we respectfully suggest that any revocation of the Russian NME status be incorporated in the WTO accession agreement. Revocation would be more appropriate when Russia has further progressed toward market liberalization.

B. **Flawed Tax Collection System**

In previous determinations, the Department noted the importance of an efficient and transparent tax collection system in determining whether NME status should be revoked. Specifically, in the Latvian determination, the Department stated:

> The development of an efficient, equitable and transparent tax-collection system is critically important in helping to ensure that the government remains sufficiently divorced from enterprise management, enterprise budget constraints remain sufficiently hard, investment returns can be reasonably anticipated, and social welfare programs that help to ease the pain of economic transitions can be funded. Where taxes are not collected or deferred, or where taxes are imposed on an arbitrary, *ad hoc* basis and in an opaque manner, compromising government-enterprise relationships, corporate governance and budget constraints can become weak and the rule of law suffers, generating lassitude and instability.[61]

This factor also mitigates against a change in the Russian economy's status at this time.

In Russia today, "{t}axation and business regulations are unpredictable, and legal enforcement of private business agreements is weak. Government decisions affecting business have often been arbitrary and inconsistent."[62] "Russia's tax policy has been an area of persistent

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60 *Id*.

61 Latvian Memo at 19-20.

62 Bureau of European and Eurasian Affairs Report at 7.

complaints by foreign investors."[63] A recent U.S. Commercial Service report aptly summarizes the situation:

> There remains, however, a high incidence of tax avoidance by Russian companies, which has placed an even greater tax burden on foreign companies, with some complaints that foreign companies are more frequently targeted for tax inspections. Due process is relatively weak. Although foreign firms have successfully appealed to the courts, tax authorities have been slow to implement these decisions. Penalties for non-compliance include confiscation, and a company's accounts can be frozen relatively quickly. Tax authorities do not differentiate between criminal intent and honest mistake when levying fines and penalties. The tax authorities currently do not have any organized administrative dispute procedures.[64]

An already unstable tax situation is further complicated by the lack of an effective and independent judiciary. As the State Department has found: "Russia's judiciary and justice system are weak. Numerous matters which are dealt with by administrative authority in European countries remain subject to political influence in Russia."[65] Furthermore, the "judiciary is often subject to manipulation by political authorities and is plagued by large case backlogs and trial delays."[66] As one example, "after five years of successful Russian litigation with repeated favorable decisions and court orders for financial restitution, a foreign investor continues to await compensation from its former joint venture partner."[67] Such precedent only serves to frighten away, rather than attract, international capital and foreign investment.

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63 Country Commercial Guide at 66.

64 *Id*. at 67-68.

65 Bureau of European and Eurasian Affairs Report at 5.

66 *Id*.

67 Country Commercial Guide at 63.

The inadequacies of the tax collection system are further compounded by the rampant corruption and enormous black market in Russia.[68] Counterfeit goods, which comprise up to sixty percent of the stock at thousands of Moscow stores, are estimated to cost the government up to one billion U.S. dollars per year in lost taxes.[69] Furthermore, Russia has 60 million workers, of whom a third ought to be submitting personal income tax declarations. However, in 2000, only 3.8 million (out of the 20 million who were required) actually submitted their income tax forms. This is a decrease from 4.3 million who had obeyed the law in 1999.[70]

Accordingly, the lack of a transparent and efficient tax collection system further demonstrates that revocation of Russia's NME status is inappropriate at this time.

C. **Massive Corruption**

The comments submitted in favor of revocation of Russia's NME status failed to refute the contention that the pervasive corruption in Russia clearly demonstrates the absence of free market conditions. Indeed, the very existence of extensive corruption and black markets are dependent upon the absence of an effective market economy. It is uncontroverted that numerous U.S. firms have identified corruption as an enormous and insidious problem in Russia. This fact may not be surprising considering that Russia has no laws that make bribing foreign officials a crime.[71] We respectfully submit that the evidence of rampant corruption and a massive black market, as thoroughly documented in our initial comments, is so extensive that this factor alone would justify maintaining Russia's status as an NME.

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68 *See infra* for further discussion. *See also* our previous December 10, 2001 comments.

69 EBRD Report at 15.

70 *Id*. at 6.

71 Country Commercial Guide at 70.

D. **Failed Banking System**

The failure of Russia's banking system also displays that Russia has not yet attained free market conditions. Put simply, the "Russian banking system does not meet the nation's capital and credit needs."[72] This factor demonstrates that the country has not recovered from its financial crisis, and has indeed lost progress previously made on the path to privatization. Since 1995, Russia's total number of banks has declined from approximately 2,600 to 1,320, and "of these, 300 barely survive."[73] Because of the low liquidity in Russia, a high proportion of transactions are actually conducted on a non-cash basis. Such barter transactions have been estimated to account for a staggering 70 to 80 percent of economic activity.[74]

Finally, the instability of Russia's banking system has contributed to Russia's inability to establish a free market system. Compared to the other countries that have successfully transitioned to market based economies, Russia continues to interfere too widely in its banking system and has made insufficient reforms regarding the banking infrastructure. "The banking sector remains one of the weakest legs in the Russian reform program, with little progress of systemic restructuring since the 1998 financial crisis."[75]

> A fundamental lack of trust pervades the system: depositors do not trust banks, banks do not trust borrowers or each other, and no one trusts the Central Bank of Russia to provide effective, impartial bank regulation. The result is that the Russian banking system largely fails to perform the basic role of financial intermediator, taking deposits and lending to business and individuals.[76]

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72 *Id*. at 75.

73 *Id*.

74 *Id*. at 78.

75 *Id*. at 68.

76 *Id*. at 68-69.

Accordingly, the failure of the banking system also supports maintaining Russia's current NME status.

VIII. **Conclusion**

The U.S. government already has recognized that Russia's transition to a fully functioning market-based economy will be a gradual one. The U.S. Department of State, for instance, has stated that its strategy for assistance to Russia is "based on the premise that Russian transition to democracy and free markets will be a long-term process."[77] Both the Respondents' concessions and the most recent reports from various U.S. government agencies[78] portray a country that has not yet achieved a market economy. Although it may be said that Russia is on the road to a market economy, it has by no means arrived at that destination. Accordingly, the Department should find that it is too early to revoke Russia's NME status. Further, we respectfully submit that any consideration of a change to Russia's NME status be incorporated into its ongoing WTO accession negotiations.

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[77] Bureau of European and Eurasian Affairs Report at 12.

[78] Various reports of the U.S. Commercial Service and U.S. Department of State which are frequently cited in these comments demonstrate that Russia is not yet a market economy. Even the most recent CIA Fact Book indicates that a "decade after the implosion of the Soviet Union, Russia is still struggling to establish a modern market economy and achieve strong economic growth." CIA, The World Fact Book–Russia, at 6, available at www.cia.gov.